

# **Table of Contents**

<b>Introduction</b>	<a href="#"><u>Page 1</u></a>
<b>Purpose</b>	<a href="#"><u>Page 1</u></a>
<b>Definitions</b>	<a href="#"><u>Page 1</u></a>
<b>Step One -- The Written Policy</b>	<a href="#"><u>Page 7</u></a>
<b>Step Two -- The Written Program</b>	<a href="#"><u>Page 8</u></a>
<b>Step Three -- Conducting the Program</b>	<a href="#"><u>Page 10</u></a>
<b>Frequently Asked Questions</b>	<a href="#"><u>Page 20</u></a>
<b>Where to Get Information</b>	<a href="#"><u>Enclosure 1</u></a>
<b>Sample Drug &amp; Alcohol Policy</b>	<a href="#"><u>Enclosure 2</u></a>
<b>Sample Positive Drug Test Reporting Letter</b>	<a href="#"><u>Enclosure 3</u></a>
<b>Management Information System (MIS) Report</b>	<a href="#"><u>Enclosure 4</u></a>
<b>CG Form 2692 B</b>	<a href="#"><u>Enclosure 5</u></a>
<b>Shared Mariners Form</b>	<a href="#"><u>Enclosure 6</u></a>
<b>Drug &amp; Alcohol Program Audit Checklist</b>	<a href="#"><u>Enclosure 7</u></a>

**Introduction:** This booklet is designed to aid the marine employer in the development of a company drug & alcohol testing program that meets the requirements of Title 46 Code of Federal Regulations (CFR) Parts 4 and 16, Title 33 CFR Part 95, and Title 49 CFR Part 40. In addition to reviewing this booklet, marine employers should become familiar with the federal regulations mentioned above and should also consider the advice of their insurance carrier and legal staff, before finalizing any policies or procedures regarding their drug & alcohol testing program. This booklet cannot possibly address every circumstance and scenario encountered in the maritime drug & alcohol testing field, however it will provide marine employers a firm understanding of the federal requirements and the practical means of complying with the regulations.

**Purpose of the U.S. Coast Guard's Drug & Alcohol Testing Program:** The intent of these regulations is to provide a means to minimize the use of intoxicants by merchant marine personnel and to promote a drug-free and safe work environment. Enforcement of these regulations by the U.S. Coast Guard is necessary to ensure that marine employers conduct testing when required and in the manner described in the regulations. The marine employer, aided by a Coast Guard Drug & Alcohol Program Inspector (DAPI), should be able to develop a program that serves as a strong deterrent to the use of intoxicants by covered crewmembers, and promotes a safe, drug-free workplace.



**Definitions:** Before getting started, a marine employer must first become familiar with some basic terms. Understanding the meaning of these terms is an important part of understanding what the regulations are asking of the marine employer. For a more complete list of definitions, please refer to

[46 CFR 16.105](#) and [49 CFR 40.3](#). Definitions are listed by function and relation, rather than alphabetically.

The following listed terms are the most commonly used by marine employers and DAPIs:

***Alcohol Use:*** The consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

***Blind Sample or Blind Performance Test Specimen:*** A urine specimen submitted to a **laboratory** for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

***Canceled or Invalid Test:*** (In drug testing) A drug test that has been declared invalid by a **Medical Review Officer (MRO)**. *A canceled test is neither a positive nor a negative test.* A sample that has been rejected for testing by a laboratory is treated the same as a canceled test.

(In alcohol testing) An alcohol test that is deemed to be invalid under [49 CFR 40.79](#). It is neither a positive nor a negative test.

**CFR:** Code of Federal Regulations. These are the rules that the marine employer is trying to comply with. Their foundation is in the law as it appears in the United States Code (USC).

**Crewmember:** An individual who is either;

- (a) On board a vessel acting under the authority of a license (such as the operator of an uninspected towing vessel, the master of a 500 gross ton ocean going vessel, or the operator of an uninspected passenger vessel [6-pac], to name but a few) or merchant mariner's document (such as an able bodied seaman or tankerman) issued under this subchapter, whether or not the individual is a member of the vessel's crew, or.
- (b) Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter. (simply stated, if your vessel is required by law to be operated by an USCG licensed or documented mariner, the people you have working aboard that vessel are subject to drug testing.
- (c) Exceptions: The following people would not be subject to drug & alcohol testing under 46 CFR 16:
  - (1) Individuals on fish processing vessels who have no duties that directly affect the safe operation of the vessel
  - (2) Scientific personnel on an oceanographic research vessel
  - (3) Industrial personnel aboard industrial vessels
  - (4) Individuals aboard a vessel, not fulfilling a requirement for manning under 46 CFR Part 15, who have no duties that directly affect the safe operation of the vessel (*see "safety sensitive positions"*)

**Chain of Custody:** Is the set of procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. In drug testing, this requires the use of the appropriate drug testing custody form, from the time of collection to receipt by the **laboratory**.

**Collection Site:** A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs. Not to be confused with **laboratory**.

**Consortium:** Is an organization that manages, among other requirements, the random testing process for its clients. It is an agent of the **marine employers** it represents, and is responsible for meeting the random testing rate that applies to the **consortium** random pool. Basically, the **consortium** takes crewmembers from a number of marine employers, puts them into a random testing pool, and then ensures that the pool is tested at the random rate established by the Coast Guard (50% annually)

**For example**, if there are 1,000 covered crewmembers, from 10 employers in the random drug testing pool, the **consortium**, on behalf of the employers, is responsible for conducting 500 random tests during the calendar year. It is important to note that members of a **consortium** may not see 50% of their own personnel tested in a given year. It is also possible that a **consortium** member may see more than 50% of its personnel tested in a given calendar year.

**Third Party Administrator (TPA):** Is any agency outside of the **marine employer's** company that assists with any aspect of the drug & alcohol program. Most commonly, the **Third Party Administrator** manages the random testing process for clients. This differs from the **consortium** in that the **TPA** does not take **crewmembers** and put them in a pool, rather the **TPA** manages the random testing process for each of its clients separately, ensuring that each client's personnel are tested at the applicable random rate.

**District DAPI:** Is the commissioned or warrant officer in charge of the U.S. Coast Guard drug & alcohol testing program for a Coast Guard District. The **District DAPI** manages the program within district boundaries and conduct audits of marine employers' programs. This billet is congressionally mandated. Each Coast Guard District has a **District DAPI**, although the Eighth District has two, one for the Gulf Coast, one for the Western Rivers.

**DAPI:** Drug & Alcohol Program Inspector. Within the Eighth District, the **DAPI** is a commissioned, warrant, or petty officer that is specifically trained to check for compliance with the U.S. Coast Guard drug & alcohol program regulations and is assigned to a local Marine Safety Office. Marine Inspectors also check for compliance with the regulations during vessel inspections.

**Directly Involved in a Serious Marine Incident:** A marine employer is responsible for determining what personnel were directly involved in a **Serious Marine Incident**. This determination should be based on the operation being performed at the time of the accident, and what personnel could have or should have had a role in that operation. A law enforcement officer has the authority to further name personnel as being directly involved in a **Serious Marine Incident** and as such, directing them to submit to alcohol and drug testing.



**Serious Marine Incident:** Is any reportable marine casualty as defined in [46 CFR 4.03-1](#) and [46 CFR 4.05-1](#), involving a vessel in commercial service, which results in any of the following:

- (a) One or more fatalities
- (b) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties

- (c) Damage to property, as defined in 46 CFR 4.05-1, in excess of \$100,000
- (d) The actual or constructive total loss of any vessel subject to Coast Guard Inspection

- (e) The actual or constructive total loss of any self-propelled vessel, not subject to inspection by the Coast Guard, of 100 gross tons or more
- (f) A discharge of oil of 10,000 gallons or more, into a navigable waterway
- (g) A release of a hazardous substance equal to or greater than its reportable quantity into the navigable waters of the United States, or into the environment of the United States, whether or not the release resulted from a marine casualty.

**DOT:** Department of Transportation.

**DOT Custody and Control Form (chain of custody):** This is the form upon which the handling of a **Drug Test** is documented. If this form is not completed correctly, a urine test may be considered "fatally flawed" and be deemed invalid. DOT **Drug Tests** must be documented on this form only.

**Dangerous Drug:** A narcotic drug, a controlled substance, or a controlled-substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 -- Title 21 United States Code Section 802) For our purposes, we will primarily be concerned with:

- (a) Amphetamines (speed)
- (b) Cocaine
- (c) Opiates (morphine, heroin)
- (d) Marijuana
- (e) Phencyclidine (PCP or angel dust)



**Drug Test:** Means a chemical test of an individual's urine for evidence of dangerous drug use. The only acceptable **Drug Test** in the U.S. Coast Guard drug-testing program is a Department of Transportation (DOT) 5-panel test. These are often referred to as a NIDA 5-panel or SAMHSA approved drug test. A marine employer may conduct other types of tests, but the 5-panel test is the only test that will be accepted towards showing compliance with the regulations.

**EAP:** Employee Assistance Program

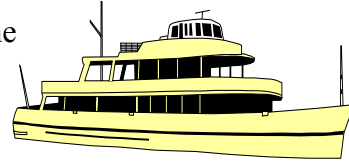
**Employer:** Is a *marine employer or sponsoring organization*.

**Marine Employer:** A marine employer is anyone, including the self-employed, who are the:

- (a) owner
- (b) managing operator
- (c) charterer
- (d) agent
- (e) master
- (f) or person in charge of a vessel, other than a recreational vessel (remember that a bass boat, when used for a *passenger for hire* situation, is no longer a recreational vessel, it is a commercial vessel)

**Commercial Service:** includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

**Passenger for Hire:** Means a passenger for whom consideration is contributed as a condition of carriage on the vessel whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.



(a) **Consideration** means an economic benefit, inducement, right, or profit, including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.



**Sponsoring Organization:** Is any company, *consortium*, corporation, association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated.

**Operation:** Means to:

- (a) navigate
- (b) steer
- (c) direct
- (d) manage, or
- (e) sail a vessel, or to
- (f) control, monitor, or maintain the vessel's main or auxiliary equipment or systems

**Operation** also includes the following actions:

- (g) Determining the vessel's position
- (h) piloting
- (i) directing the vessel along a desired trackline
- (j) keeping account of the vessel's progress through the water
- (k) ordering or executing changes in course, rudder position or speed
- (l) monitoring a lookout
- (m) Controlling, operating, monitoring, maintaining or testing the vessel's
  - (1) propulsion & steering systems
  - (2) electric power generators
  - (3) bilge, ballast fire and cargo pumps
  - (4) deck machinery including winches, windlasses, and lifting equipment
  - (5) life-saving equipment & appliances
  - (6) firefighting systems and equipment
  - (7) navigation and communication equipment
- (n) Mooring, anchoring, and line handling
- (o) Loading or discharging of cargo or fuel
- (p) assembling or disassembling of tows
- (q) maintaining the vessel's stability and watertight integrity

**Safety Sensitive Duties:** Include but are not limited to;

- (a) directing and mustering passengers in emergencies
- (b) passing out lifejackets
- (c) controlling and operating lifesaving equipment
- (d) controlling and operating firefighting equipment

**Safety Sensitive Position:** Is any position (billet) aboard a vessel, that requires the person filling that position to perform one or more **safety sensitive duties** on either a routine or emergency only basis. **Examples** of this type of crewmember include dealers, bartenders, game operators and service personnel aboard excursion or gaming vessels. Any person filling a **safety sensitive position** is subject to U.S. Coast Guard drug & alcohol testing. All **crewmembers** are considered to be filling **safety sensitive positions** as well.

**Refusal or Refuses to Submit:** Happens when a **crewmember** fails to provide a urine sample as required by 49 CFR Part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process, such as substitution, intentional dilution, or adulteration of a sample.

**Laboratory:** Means a facility that has been approved by the Department Of Health and Human Service (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), as verified by listing in the Federal Register, to handle, analyze, and report the results of, urine samples submitted for testing under the Federal Workplace Drug Testing Guidelines. Specimens must be analyzed by a SAMHSA approved **laboratory** to be considered by the U.S. Coast Guard/DOT.

**MIS Report:** The Management Information System Report is a Coast Guard form number 5573, ([www.uscg.mil/hq/g-m/nmc/genpub.htm#forms](http://www.uscg.mil/hq/g-m/nmc/genpub.htm#forms)) and is required to be filled out by the marine employer and sent to Coast Guard Headquarters by March 15<sup>th</sup> of each year. The form details the **marine employer's** drug testing activity for the preceding calendar year. **Consortiums and Third Party Administrators** may submit these on behalf of their clients. The **marine employer** must be able to show that this has been done.



**Medical Review Officer (MRO):** Is a licensed physician (MD or Doctor of Osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant bio-medical information.

**Return to Work Letter:** This is a letter, issued by an **MRO**, that verifies that an individual who had previously tested positive for drugs, is now considered "drug-free" and that the risk of subsequent drug use by the individual is sufficiently low enough to

warrant the return to work of that individual in a "*safety sensitive position.*" Only the *MRO* has the authority to issue this type of letter. The *return to work letter* must be presented to the marine employer before allowing a mariner that had tested positive, to return to work in a *safety sensitive position.*

**Getting Started:** With a basic understanding of the terms commonly used in discussing drug & alcohol testing programs, a marine employer is ready to begin putting together a program. The next pages are dedicated to taking a marine employer, step by step, through the process of developing a policy and program, and then how to implement the program.

**STEP ONE -- THE WRITTEN POLICY:** {reference: [46 CFR 16.401\(a\)](#)}

I. Each marine employer is required to have a written drug & alcohol testing policy. This policy is generally nothing more than a few paragraphs that details a company's position regarding their expectations of their crewmembers with regard to drug & alcohol testing.

A. At a minimum, a policy should cover the following topics:

1. That all company personnel, full-time, part-time, year round, seasonal, or contracted, that meet the definition of a crewmember, are subject to U.S. Coast Guard Drug & Alcohol Testing, in accordance with 46 CFR Parts 4 and 16.
2. That any crewmember testing positive will be immediately removed from their safety sensitive duties.
3. That refusals and positive test results will be reported to the U.S. Coast Guard, in accordance with 46 CFR 16.
4. Dismissal policy. Nothing in the regulations requires the marine employer to fire a crewmember that tests positive or refuses to test, only that they be removed from their safety sensitive duties. It is up to each individual employer to decide if a positive test or refusal will result in termination. If so, it needs to be stated in the company policy.
5. If company vessels are operated in waters that fall under state or local law enforcement jurisdictions, crewmembers should be advised in the policy that they might be subject to testing under those jurisdictions as well.
6. Policy regarding alcohol use & possession and the consequences for being found aboard a commercial vessel with a blood alcohol concentration greater than or equal to, 0.040%.

B. Many marine employers incorporate their position regarding the possession of firearms, drug paraphernalia, illegal drugs, and use of prescription drugs or over the counter medications in their policy. Additionally, any actions the company plans to take that exceed the minimum requirements of the regulations should be spelled out in the policy.

C. To merely state that the company has a "zero tolerance" policy or will "comply with all federal regulations" is not sufficient and will not pass muster during an audit. Likewise, policy that does not exist in written form, does not meet the requirements of the regulations.



D. Ideally, each crewmember signs a form stating that they have read and understand the company's drug & alcohol testing policy. This signed acknowledgement should remain on file for as long as the company employs the individual.

**Note:** The requirement for a policy applies to all marine employers, including the self employed. The size of the marine employer has no bearing on the requirement for a written policy.

## **STEP TWO -- THE WRITTEN PROGRAM:**

{Reference [46 CFR 16.301](#), [49 CFR 40.23](#)}

With the marine employer's policy established and written, the next step is to develop a written program. The program is a written document that implements the policy. It can be compared to a spill response plan or operations plan. A written program is not a regurgitation of the regulations. Essentially, the written program details exactly how the marine employer will comply with the regulations.

An easy way to format a written program is to briefly paraphrase each section of the regulation and directly after each summary, list the company's responsibility, the employee's responsibility, and any third party's responsibility as applicable.

I. To be effective, and meet the requirements of the regulations, a written plan must specifically address the following areas:

A. Designate a primary collection facility.

1. This is the collection facility the marine employer will use for the majority of testing. Obviously other sites may need to be used, but the primary facility will likely be the one where all pre-employment testing will be conducted, as well as the bulk of random testing.
2. The designation is nothing more than the name, address and phone number of the collection facility. {reference [49 CFR 40.3](#)}

B. Designate a DHHS approved laboratory.

1. In most cases, the primary collection facility has already selected a DHHS lab to do business with. All the marine employer needs to do is put it down in writing.
2. Again, the designation is nothing more than the name, address and phone number of the laboratory. {reference [46 CFR 16.340\(a\)](#)}

C. Designate an MRO.

1. In many cases the collection facility has one or more MROs on staff. Simply put down in writing, in the program, which MRO will be verifying the company's drug tests.
2. Once more, print the name, address, and phone number of the MRO. {reference [46 CFR 16.370\(a\)](#)}

D. Detail the categories of testing crewmembers will be subject to. These include:

1. Pre-employment (include exemptions)
2. Random (state who will manage the selection process)
3. Post-Accident (state the company's definition of "accident")
4. Reasonable Cause (state circumstances that create reasonable cause)
5. Periodic (address testing for license/document renewals)

**Note:** Each of these testing protocols will be discussed in detail in **Step 3 --Conducting the Program.** *The methodology discussed in Step 3 must be detailed in the written program.*  
 {reference [46 CFR 16.301](#), [49 CFR 40.23](#)}

E. Detail the five (5) drugs being tested for. They are:

1. Amphetamines
2. Cocaine
3. Marijuana
4. Opiates
5. Phencyclidine

A discussion of the cut off levels as outlined in [49 CFR 40.29\(e\)\(f\)](#) should be included.  
 {reference [46 CFR 16.350](#)}

F. Procedures for the collection of specimens.

1. This information is available through the primary collection facility, as they are required to have written procedures available to their collectors. Simply ask for a copy. **Note:** If collections will occur aboard vessels, ensure collectors have procedures to follow for on scene collections as well. The security of the collection site must be addressed as well.  
 {reference [46 CFR 16.330](#) & [49 CFR 40.23](#)}

G. Employee Assistance Program description. This section should describe exactly how crewmembers and supervisors will receive their training and education, and should detail the assistance numbers that will be posted in the workplace. EAP training is required to be documented, and that documentation must be provided to an auditor or USCG inspector when requested. Signed attendance rosters and certificates of completion are good ways to document the training.  
 {reference [46 CFR 16.401\(a\)](#)}

H. MIS reporting requirements. Detail who in the company is responsible for generating and filing the report, or, indicate that the report will be filed on the company's behalf by either a consortium or TPA. {reference [46 CFR 16.500](#)}

I. Reporting requirements. Explain that verified positive tests, refusals, & verified adulterated, diluted, or substituted specimen cases will be reported to the U.S. Coast Guard in accordance with [46 CFR 16.201](#). [Enclosure 3](#) is a sample form letter for marine employers to use to report positive drug tests to the U.S. Coast Guard. A copy of the custody & control form, as well as a copy of the MRO/lab report should accompany the letter to the appropriate Coast Guard Marine Safety Office.

### **STEP 3 -- CONDUCTING THE PROGRAM:**

The following section is a discussion of the practical, day-to-day execution of the marine employer's drug & alcohol testing program. Here, we will begin with a new hire and follow this crewmember through the entire testing program. The specifics discussed in this section need to be written into the program. Refer to the [FREQUENTLY ASKED QUESTIONS](#) section of this booklet for practical answers to common problems associated with the administration of the drug & alcohol testing program.

**I. The Pre-employment Test:** Your company is about to hire a mariner to serve aboard one of your vessels, and that particular vessel is, by law, required to be operated by a licensed mariner. The company needs to conduct a pre-employment test on this prospective employee. Before conducting the test, the new hire should read and acknowledge the company's drug & alcohol testing policy. *The company cannot put this person to work in a safety sensitive position until the **results** of the pre-employment test are received.* Obviously, a positive test result will prohibit your company from placing the individual in a safety sensitive position.  
{reference [46 CFR 16.210\(a\)](#)}

**A. Pre-employment Exemptions:** There are two scenarios in which a marine employer may waive a pre-employment drug test.  
{reference [46 CFR 16.210 \(b\)\(1\)\(2\)](#)}

- (1) The mariner has passed a DOT drug test within the previous six (6) months, and has had no positive tests within those 6 months. **-or-**
- (2) The mariner has been subject to random DOT drug testing for at least 60 of the preceding 185 days, did not have any positive test results, and did not refuse to take a required test.

**Note:** In each of these cases, the marine employer is required to obtain documentation that supports either of the exemptions. This documentation comes in the form of a letter from a previous marine employer or in the form of a drug test result that has been verified by an MRO.

**B. Record Keeping for Pre-Employment Tests:** A negative test result (mariner passed the test) needs to be kept on file and readily available for as long as the individual serves as a crewmember for the employer and is employed by the company.

A DAPI conducting an audit will verify compliance with 46 CFR 16.210(a) by asking for proof that the marine employer did not *"engage or employ any individual to serve as a crewmember unless the individual passed a chemical test for dangerous drugs for that employer."*

- (1) Simply, on any given day, a DAPI should be able to pick any name from your company's crew list, and be able to see a pre-employment drug test result.
- (2) The only exception is for those crewmembers still serving who were hired prior in 1989 or earlier, as this is when the drug & alcohol testing regulations took force.
- (3) Likewise, any documentation supporting an exemption to pre-employment drug testing must be retained for as long as the marine employer employs the crewmember.
- (4) A POSITIVE test result must be kept on file for five (5) years, no matter whether the mariner was hired or not. If the mariner holds a license or merchant mariners document, the positive test result must be reported to the U.S. Coast Guard.

**II. The Random Drug Testing Program:** Now that we have in hand a negative test result for our newly hired mariner, we need to get that mariner enrolled in a random drug testing program that meets the requirements of [46 CFR 16.230](#). Any person serving aboard a commercial vessel that meets the definition of a crewmember or performs a safety sensitive duty, is required to be enrolled in a random drug testing program. On excursion vessels or gaming vessels, ask the following question; "Is this person required to participate in drills as part of the vessels inspection process?" If the answer is yes, that person is subject to all of the provisions of 46 CFR 16 and must be included in your random program. (On smaller operations, i.e. 6-packs, it is safe to assume all crewmembers are in safety sensitive position)

*EXAMPLE: On a dinner excursion boat, a bartender is required to muster passengers and pass out life jackets in case of fire. When the Coast Guard inspected the vessel, the bartender was required to perform this function. In this case, the bartender is performing a safety sensitive duty and is required to be drug tested.*

**A. What is a Random Selection:** "The selection of crewmembers for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer based random number generator that is matched with crewmembers' Social Security numbers, or other comparable identifying numbers."  
{reference [46 CFR 16.230](#) (c)}

- (1) This means there has to be some kind of an impartial selection process. This includes:
  - (a) Names in a hat (provided no one peeks and the slips of paper are the same size)
  - (b) Computer program for random selection (often used by human resource departments, TPAs and consortiums.
- (2) In addition, "Each marine employer shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year [or operating season]."  
{reference [46 CFR 16.230](#) (h)}
- (a) Simply put, if you have to do 12 random tests in a given year, they all shouldn't be done on the same day.
- (b) The idea is that crewmembers should have the feeling that on any given day, they could be called up to provide a specimen. This feeling will only happen when crewmembers see random testing being conducted throughout the year, with no patterns.
- (c) Tying testing to a particular day, such as payday, the 15<sup>th</sup> or 1<sup>st</sup> of the month, or to a particular month, such as 1<sup>st</sup> or last month of a quarter, develops a pattern that mariners will pick up on and use to their advantage, if they are already so inclined.

**B. How to determine how many Random tests to conduct in a year:** "The minimum annual percentage rate for random drug testing shall be 50 percent of covered crewmembers." {reference [46 CFR 16.230](#) (e)}

- (1) This means just what it says, 50 percent of the company's total number of crewmembers must be randomly tested each calendar year.

- (2) Furthermore, "Under the testing frequency and selection process used, each covered crewmember shall have an equal chance of being tested each time selections are made and an employee's chance of selection shall continue to exist throughout his or her employment."

{reference [46 CFR 16.230](#) (c)}

- (a) This means that random testing is based on the total number of personnel employed as crewmembers, not the number of crewmembers needed to man the company's vessels.
- (b) It also means that all of the crewmember names go into the selection process, regardless if they have already been selected earlier in the year. That is why it is possible to have one person selected several times while another may not be selected at all.

*EXAMPLE: A marine employer owns 10 tugboats, each tugboat requires 10 crewmembers. The marine employer employs 300 mariners to fill the 100 billets. Since "each covered crewmember shall have an equal chance of being tested each time selections are made AND an employee's chance of selection shall continue to exist throughout his or her employment," the marine employer is required to submit 150 random samples for the calendar year.*

*EXAMPLE: A marine employer owns one offshore supply vessel and employs 40 crewmembers. The marine employer is required to submit 20 random samples for the calendar year.*

*EXAMPLE: An operator of an uninspected passenger vessel, a fishing guide, is self-employed and is the only crewmember. The guide is required to be selected randomly once during the calendar year. In this case, the selection must be made by a disinterested third party, since the random test, as with all random tests, must be, "unannounced."*

**C. Making the Random Selection:** Knowing how many tests need to be conducted in a year will help the marine employer decide how often to conduct tests. There are a few acceptable methods for making random selections:

1. **TPA or Consortium.** The marine employer provides updated crewlists to the TPA or consortium, which in turn enters the names on the crewlist into their database.
  - (a) Based on customer needs, the TPA or consortium will generally use a computer to select a number of mariners for a random test.
  - (b) In the case of a consortium, it is important to remember that the crewmembers have been entered into a much larger pool that includes crewmembers from other companies. The consortium must then randomly test 50 percent of the total number of crewmembers in the pool. This means that a marine employer may not see 50 percent of his or her own mariners tested in a given year. In this case, the marine employer's proof of compliance with the random testing requirements is covered by presenting a valid contract with a consortium for the calendar year in question. Conversely, the marine employer could see more than 50 percent of their employees tested. A TPA on the other hand, generally manages the random process for the marine employer, ensuring that the employer will have tested 50 percent of the total number of crewmembers during the course of a year.
  - (c) In both cases, drug testing notifications to the marine employer are generally made in writing. It then becomes the marine employer's responsibility to

contact the employees. Employees should not be given more than 24-hours notice for a random test.

2. Selection by Vessel: For many companies it may be easier to put the names of 10 vessels in a hat, rather than deal with 300 or more names.  
In this case the marine employer may select "one or more vessels and [test] all crewmembers covered by this section, provided that each vessel subject to the marine employer's test program remains equally subject to selection"  
{reference [46 CFR 16.230](#) (c)}
3. Self Administered Selection by Name: Nothing prohibits a marine employer from managing their own random process so long as all of the provisions of [46 CFR 16.230](#) are met, AND, the person conducting the selection, is not subject to testing. (this would not meet the requirement for unannounced)

**III. Serious Marine Incident or Post-Accident Drug & Alcohol Testing:** The maritime industry accepts a certain amount of risk in its operations, and from time to time, accidents happen. Once all of the emergent concerns have been addressed, the marine employers must ensure that timely drug & alcohol testing is conducted.

**A. When is Testing Required following an Accident:** The U.S. Coast Guard requires drug & alcohol testing for those personnel directly involved in a Serious Marine Incident. {reference [46 CFR 16.240](#), [46 CFR 4.06-5](#)} A Serious Marine Incident, is any reportable marine casualty {reference [46 CFR 4.03-1](#)} that results, or, in the marine employer's estimation **may result**, in any of the following:

- (1) One or more fatalities
- (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties
- (3) Property damage in excess of \$100,000
- (4) Actual or constructive total loss of any inspected vessel
- (5) Actual or constructive total loss of any self-propelled uninspected vessel of 100 gross tons or more
- (6) A discharge of oil into a navigable water excess of 10,000 gallons, whether from a casualty or not
- (7) A release of a Hazardous Substance greater than or equal to its reportable quantity into a navigable water, whether from a casualty or not.

**Note:** A marine employer may decide to require post accident testing for less serious incidents, however, the employer's definition of an accident, or specific accidents that mandate testing, should be spelled out in the drug & alcohol testing program. Marine Employers should consult their legal staff and insurance carriers when developing this portion of the drug & alcohol testing program.

**B. How to Conduct Serious Marine Incident Testing:** Federal law now requires **alcohol** testing to be conducted within two (2) hours of a Serious Marine Incident, once emergent concerns have been addressed. {reference Section 304 Coast Guard Authorization Act of 1998, 46 USC 2303(a)}



- (1) To meet this mandate, it is recommended that marine employers identify, in writing in their program, under the heading of post accident testing, resources available to them, 24-hours a day, 7 days a week, 365 days a year, in the areas their vessels operate.
- (2) This section of the written program needs to include the name of the DOT collector to be called or used, the physical location of the collection site, and the telephone number.
- (3) Testing in a post accident environment is generally conducted at the site, conditions permitting. It may also be necessary to conduct testing at a hospital. It is the marine employer's responsibility to see that the drug and alcohol tests are conducted in accordance with federal regulations.
- (4) Again, only a DOT 5-panel test of a mariner's urine specimen is acceptable. A blood test for drugs is unacceptable.
- (5) For alcohol, the test must be quantitative, therefore, the only acceptable methods are a breath test, or a blood test. A urine test for alcohol is not acceptable.
- (6) The post accident **drug test**, or serious marine incident driven drug test, need not be done within two (2) hours. Rather, the drug test must be conducted as soon as practicable but not more than 24 hours after the accident.  
{reference [46 CFR 4.06-5](#), & [4.06-20](#)}

**Note:** Marine employers may want to consider soliciting the assistance of local water patrols and law enforcement officers to ensure a timely alcohol test is conducted.

In most circumstances, all parties concerned will usually find it beneficial to conduct the tests one after the other, circumstances permitting.

**IV. Reasonable Cause Drug Testing:** Any crewmember engaged or employed aboard a U.S. vessel, that is required to be operated by a person holding a license or merchant mariners document, who is reasonably suspected of using a dangerous drug, must be chemically tested for dangerous drugs.

{reference [46 CFR 16.250\(a\)](#)} Likewise a crewmember suspected of being intoxicated (blood alcohol content greater than or equal to 0.040%), shall be subjected to a breath or blood test for blood alcohol concentration.

{reference [33 CFR 95.035](#)}

**NOTE:** No one can be forced to submit to a reasonable cause test. Any refusal should be thoroughly documented and reported to the Coast Guard as appropriate. Any crewmember suspected of being under the influence of a dangerous drug or alcohol should be removed by the marine employer from that safety sensitive position. The company consequences should be clearly defined in the company drug & alcohol policy.

**A. Making a Reasonable Cause Determination:** "The marine employer's decision to test must be based on a reasonable and articulable belief that the individual has used a dangerous drug based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the individual by two persons in supervisory positions." {reference [46 CFR 16.250](#) (b)}

- (1) The practical application of this rule is the "judge test." If you as the marine employer or supervisor, would feel confident in your ability to tell a judge exactly what physical, behavioral, emotional, or job performance cues indicated to you

that a mariner needed to be drug or alcohol tested for reasonable cause, then you probably have reasonable cause.

- (2) On the other hand, if that decision was based on the thought, "Well, I've seen plenty of drunks and drug addicts on TV, and he looked like one," you may have a problem.
- (3) The best training available to the mariner (masters and licensed operators in charge of vessels are supervisors) and the supervisors of licensed operators, is the information provided through the Employee Assistance Program training, which will be discussed in greater detail later.(page 18) In short, this training lays the foundation for a person to recognize the physical and behavioral manifestations of substance abuse or alcohol use.
- (4) "When the marine employer requires testing of an individual under the provisions of this section, the individual must be informed of that fact and directed to provide a urine specimen as soon as practicable. This fact shall be entered in the vessel's official log book, if one is required." {reference [46 CFR 16.250](#) (c)}

**B. Expanding the Reasonable Cause Definition:** Many marine employers expand the definition of a reasonable cause drug test to include a number of situations. Examples include, "being reasonably suspected of possessing drugs or alcohol aboard a company vessel", "being reasonably suspected of dealing drugs aboard a company vessel", "being suspected of having been involved in an accident on company time" and many others.

- (1) Marine employers are strongly advised to seek the counsel of their legal staff and insurance carriers in the development of reasonable cause test limits. Of course, at a minimum, the company drug & alcohol program shall state that reasonable cause testing will be conducted in accordance with [46 CFR 16.250](#).
- (2) Should the marine employer decide to broaden the definition, that expanded definition must be clearly spelled out in the program as well.

**V. Periodic Drug Testing:** This category of drug testing centers around the requirements of the Regional Examination Centers for the issuance of licenses and merchant mariners documents. The marine employer is not responsible for the cost of these tests. The marine employer may be asked by a crewmember to provide the REC with documentation that would support an exemption to testing for the mariner. {reference [46 CFR 16.220](#)}

**REMEMBER:** The marine employer's written drug & alcohol program must address the specific processes, methods, and resources the marine employer intends to use to comply with the provisions set forth in the regulations. The written program tells how the company will comply with the regulations. The program should avoid legal jargon and be written in such a manner that any supervisor could understand it.

**VI. Record Keeping:** A marine employer's proof that they are complying with the regulations, is in the form of hard-copy records. In other words, a company has done all of the required testing and is now being audited by the Coast Guard.



- A. To show that they have done the tests as required, the company must be able to produce the following documentation:
  - (1) A custody and control form, signed by the MRO, indicating the test is either positive or negative. **or,**
  - (2) A lab report (which may have been faxed) that has been signed by the MRO indicating that the test is either positive or negative.
  - (3) In most cases, the marine employer receives COPY 7 of the custody and control form, which does not bear the MRO's signature. This is then followed up with the MRO report or lab report signed by the MRO. These two documents should be filed together.
  - (4) The signature of the MRO is the only indicator that the test is either positive or negative. As such the marine employer is required to maintain the records so that they "shall be sufficient to satisfy the requirements of [46 CFR 16.210\(b\)](#) and [46 CFR 16.220](#) (c) of this part." Without the MRO signature, the marine employer cannot meet this requirement.
- B. These two records (the custody and control form and the MRO/lab report) are the only documents that serve as proof that drug testing has been conducted in accordance with federal regulations. From these records an auditor can tell:
  - (1) If the proper custody and control forms were used
  - (2) If only 5-panel tests were conducted
  - (3) If the test dates (random) were spread reasonably throughout the year
  - (4) If a DHHS lab was used to analyze the specimen
  - (5) If the records support the information provided on the MIS report.
- C. In addition, the marine employer is required to maintain records that "Identify the total number of individuals chemically tested annually for dangerous drugs in each of the categories of testing required by this part including the annual number of individuals failing chemical tests and the number and types of drugs for which individuals tested positive." The MIS report will satisfy this requirement for record keeping. {reference [46 CFR 16.260\(b\)\(2\)](#)}
- D. **How Long to Keep Records:** Positive drug tests must be kept for a minimum of five (5) years. This includes positive pre-employment drug tests for mariners the marine employer did not hire as a result of the failed test. Negative drug tests must be kept on file for a minimum of one year.

**Note: Negative pre-employment test results must be kept for as long as the marine employer employs the crewman.** This is the only way for the employer to show compliance with [46 CFR 16.210\(a\)](#).

**VII. Standards and Procedures for Chemical Testing for Dangerous Drugs:** The marine employer is ultimately responsible for the adequacy of the collection site, collection site security, the accurate completion of the chain of custody, specimen handling and shipping, specimen analysis, analysis reports, and that the laboratory meets DHHS certification standards. Clearly, the marine employer contracts with various providers of these services, and as such, is not involved in the details of specimen collection and analysis. However, since the marine employer is ultimately responsible, it is in the best interests of the marine employer to make sure they are getting their money's worth. The company is paying for the testing, so the company should make sure the testing is being

conducted in accordance with federal requirements. A visit to a prospective collection site, MRO, or even a lab, is time well spent. Not only will the marine employer know that their trust and confidence is well placed, they will also gain valuable insight and understanding of the intricacies of the drug testing process.

**VIII. Release of Information:** "Except as provided for in this part [[46 CFR 16.260](#) & [370](#)] and in [46 CFR 4.06-60](#), an employer shall not release individual test results or other personal information for anti-drug program records. Individual results from drug tests required by this part may be released if the individual tested signs a specific authorization for the release of the results to an identified person. Nothing in this section shall prevent an individual tested under this part from obtaining the results of that test."

{reference [46 CFR 16.380](#)}

A. This means that a marine employer cannot pass along to another marine employer the results of a particular mariner's drug test.

(1) That's not to say that if asked for a reference the marine employer cannot reply with "the mariner's employment was terminated for a violation of the company's drug & alcohol policy," it simply means that a marine employer cannot discuss the results of a drug test with any other party except those detailed in the regulations (MRO, Coast Guard, testing laboratory, & the individual).

B. A mariner has a right to the results of their drug test.

C. A mariner can sign a release for a specific test for a specific person. This happens in situations where the company administered the test as part of their testing program, but the results satisfies a need of the mariner such as license renewal, or showing proof of cure.

**IX. Employee Assistance Programs:** This is the section of the drug & alcohol testing program that causes marine employers the most problems come audit time.

**A. Program Intent:** The intent of an EAP is to provide mariners with a safety net, where, should they decide that they have a substance abuse problem or alcohol abuse problem, the mariners know where to go to seek counseling and assistance before they test positive.

(1) This EAP may be part of a company's benefit package or may be provided by a third party.

(2) The marine employer must provide their mariners with the means to seek assistance. That mechanism is in many cases, telephone numbers to entities such as Alcoholics Anonymous, Narcotics Anonymous, or a local substance abuse treatment facility.

(3) There is no requirement that the listed numbers be toll-free. The posted telephone number may also be direct to the employer's EAP provider.

(4) It is up to each marine employer to decide if they want to pay for any rehab or counseling. This is another consideration that should be spelled out in the policy or program.

**B. Program Requirements:** There are essentially two parts to the EAP, education and training.

(1) EAP Education Program: "Each EAP education program must include at least the following elements:

- (a) Display and distribution of informational material
- (b) Display and distribution of a community service hot-line telephone number for crewmember assistance
- (c) Display of the employer's policy regarding drug and alcohol use in the workplace." {reference [46 CFR 16.401\(a\)](#)} Simply stated, the marine employer must post their policy and hotline numbers in the workplace. Good locations include the galley, bulletin boards, and by time clocks. The material should be posted where the majority of the crew will routinely see it. Many employers find it easy to place the assistance hot line numbers on the same page as their policy.

**Note:** The Coast Guard does not provide educational materials or sponsor any hotline numbers. Hot line numbers can be found in the yellow pages and materials are available through various commercial sources and may be available from TPAs, consortiums, MROs, or local DARE program administrators.

- (2) EAP training program: "An EAP training program must be conducted for the employer's crewmembers and supervisory personnel. The training program must include at least the following elements:
  - (a) The effects and consequences of drug and alcohol use on:
    - (A) personal health
    - (B) personal safety
    - (C) work environment
  - (b) The manifestations and behavioral cues that may indicate drug and alcohol use and abuse
  - (c) Documentation of training given to crewmembers and the employer's supervisory personnel.
  - (d) Supervisory personnel must receive at least 60 minutes of training.

**X. Management Information System:** Marine employers are required to submit to Coast Guard headquarters, a MIS report (Coast Guard Form 5573) by March 15<sup>th</sup> of each year, which documents that employer's drug & alcohol testing activities for the preceding calendar year.

*EXAMPLE: Company XYZ conducted 300 random, 500 pre-employment, 16 post-accident, 0 reasonable cause, and 0 periodic drug tests during calendar year 1999. This information, along with the numbers of negative and positive results, and the types of drugs detected, will be entered on the CG Form 5573 (MIS report) by the marine employer and the report will be mailed to the Coast Guard not later than March 15, 2000.*

**A. Exception to the reporting requirement:** Those marine employers with 10 or fewer crewmembers are only required to file the MIS report for three consecutive years since 1996. If 2000 is the first year such a marine employer is filing a report (to cover calendar year 1999), then the marine employer would have to file again in 2001, and again in 2002. After 2002, the marine employer would not need to file again.

- (1) The marine employer is still required to keep track of the information, in accordance with [46 CFR 16.260\(2\)](#), but would not need to complete the MIS report.

- (2) The reporting exemption applies only to those marine employers that have 10 or fewer crewmembers.

**XI.** **Blind Tests/Quality Assurance Requirements:** While the testing laboratories are required to maintain stringent in-house quality assurance programs to retain DHHS/SAMHSA certification, the marine employer is also required to participate in quality assurance testing.

**A. Number of Blind Samples Required:** "Each employer shall submit three (3) blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 per quarter." {reference [49 CFR 40.31\(d\)\(2\)](#)}

**B. Number of "Hot"(spiked with a known amount of a metabolite) Samples Required:**

This is predicated by the number of covered crewmembers a marine employer has:

- (1) Employers with 2,000 or more crewmembers must ensure that approximately 20 percent of the blind samples they submit are positive for one or more drugs per sample.
  - (a) Positive blind samples shall be in a distribution such that all of the 5 drugs to be tested are included in approximately equal frequencies of challenge.
  - (b) The positive samples shall be spiked only with those 5 drugs for which the employer is testing.
- (2) Employers with fewer than 2,000 covered employees may submit blind performance samples at the same rate as larger employers, submit only blank samples, or a split specimen.  
{reference [49 CFR 40.31\(d\)\(1\)\(2\)\(3\)](#)}

**Note:** Consortiums shall be responsible for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium. {reference [49 CFR 40.31\(d\)\(5\)](#)}



## **FREQUENTLY ASKED QUESTIONS**

### **Do I need a chemical-testing program?**

A prevailing question that smaller commercial operators (employing only one or two employees) often ask is “Do the chemical testing regulations apply to me?” The answer is a big “Yes”. The chemical testing regulations apply to most commercial vessel operations regardless of the number of employees and regardless of whether the vessel is inspected or uninspected. This includes “guide services” and self-employed mariners.

### **Do “independent contractors” or part time crewmembers need to be part of a marine employer’s chemical testing program?**

Again, the answer is “yes”. If an individual meets the definition of a crewmember, as described in 46CFR16.105, they must be part of the chemical-testing program, regardless of how short the time period they work on board the vessel. Enclosure 6 has been included in this guide in order to assist with the problem of having part time crewmembers in the chemical-testing program.

### **With bareboat charters, who is responsible for ensuring a drug-testing program is in place for that chartered vessel (the hired captain, vessel owner, people who chartered the vessel, etc.)?**

The marine employer is responsible. This can be played out in several ways depending on the arrangements/contracts and should probably be looked at on a case by case basis. Any one of the people listed above can play the part of the marine employer. That person must have a chemical-testing program in place.

### **I change mates so frequently; do I have to obtain a pre-employment test for each mate?**

The pre-employment test may be waived if one of the conditions under 46CFR16.210 is met, otherwise you must conduct a pre-employment test for each new-hire, and, must obtain the results of the test prior to engaging or employing the mariner aboard your vessel.

### **What are the penalties for violating these regulations?**

The following enforcement actions may be taken for noncompliance with the Coast Guard chemical testing regulations:

1. Certificate of Inspection (COI) may be removed or not issued
2. Civil Penalty may be assessed of up to \$5,000.00 per violation, per day.
3. Suspension & Revocation (S&R) proceedings may be initiated against an individual’s license, MMD, or COR
4. Captain of the Port (COTP) order may be issued (prohibiting the operation of the vessels involved until compliance is gained)

5. Letter of Warning
6. CG-835 (deficiency ticket) may be issued.

**What about the marine employer who runs a “not-for-profit” or charity operation and the crewmember who is a “volunteer”?**

In these two cases the financial or payment status is not an issue. The requirements for chemical testing still apply.

**Are individuals changing positions or ships within a company’s fleet considered “new hires” and need a pre-employment test?**

No.

**Are Breathalyzer devices required onboard?**

Yes, but only for inspected vessels certified for unrestricted ocean or restricted overseas routes.

**What happens when one of my crewmembers tests positive?**

Several things will need to be done by the marine employer. First and foremost, the crewmember must be removed from the safety sensitive position. The crewmember may not return to work in that, or any other safety sensitive position, until after obtaining a "return to work" letter from the MRO.

Next, the marine employer should provide the crewmember with the hotline number for the EAP provider so that the crewmember can seek assistance.

If the crewmember is the holder of a Coast Guard issued license or merchant mariners document, then the marine employer is required to report the positive test to the U.S. Coast Guard. (Failure to report positive test results may result in a civil penalty against the marine employer) Unlicensed/undocumented mariners are removed from safety sensitive positions and cannot return to work until they obtain a return to work letter from the MRO.

Once the Coast Guard receives the report, an Investigating Officer will be assigned to investigate the drug test. This investigation will verify the validity of the test and will ensure there are no "fatal flaws" in the testing process.

If the investigation reveals there are "fatal flaws" in the case, no action will be taken against the mariner.

If the investigation confirms that the positive test result is valid, the Investigating Officer will initiate a Suspension & Revocation case against the mariner.

After being served with a complaint for Use of a Dangerous Drug, the mariner has two basic choices:

(1) Contest the Complaint. If the mariner contests the allegations made in the complaint, the case will be heard by an Administrative Law Judge at a formal Suspension & Revocation Hearing. If the Coast Guard proves its case at the hearing, the Administrative Law Judge will likely revoke the mariners document.

(2) Enter into a Consent Agreement. If the mariner does not wish to contest the

allegations made in the complaint, the case can be settled through a consent agreement. For Use of a Dangerous Drug, the standard consent agreement has the following sanctions and conditions:

- (a) Revocation, stayed on, 12 months suspension and completion of;
- (b) A bona-fide rehab program
- (c) 12 months of aftercare, consisting of documented attendance of support meetings like AA/NA, (avg. of 4 per month), 6 unannounced random drug tests (all must be negative), & obtain a return to work letter from the MRO.

It takes most mariners 12-18 months to complete this process. The mariner's license is suspended during those 12-18 months. The license is reinstated once all of the requirements of the agreement are met. Failure to complete the agreement in the specified time will result in revocation of the license.

**One of my crewmembers tested positive, but he got some counseling and took another test and came up negative. Can I put him back to work on my boats?**

A mariner who tests positive for a dangerous drug cannot return to work in a safety sensitive position until he or she has obtained a return to work letter from the MRO, regardless of any other treatment, counseling, or subsequent drug tests. A marine employer that knowingly returns a mariner to duty without the return to work letter is subject to a civil penalty of up to \$5,000.

**What is an "adulterated" specimen?**

An adulterated specimen is a urine specimen, submitted for USCG/DOT drug testing, that has been found by a DHHS/SAMHSA laboratory, to have substances in the sample, that are not normally found in human urine. This analysis is confirmed by the MRO.

**Is a diluted specimen reasonable cause for a direct observation collection?**

A diluted specimen can only be used as reasonable cause for a direct observation collection when there is no evidence of a medical explanation for the dilution, and the test was not performed by the lab. Marine employers must speak with their MRO regarding diluted tests before considering any further action.

**What will the Coast Guard do about a mariner who refuses a test?**

A refusal is handled in the same fashion as a positive test result. That does not mean a refusal is a positive, it simply means that the Coast Guard will seek the same sanctions against a licensed or documented mariner who refuses a test, as that for a licensed or documented mariner who fails a drug test. The Coast Guard would initiate Suspension & Revocation proceedings against the mariner, seeking the revocation of the license or document.

**What will the Coast Guard do about a substituted or adulterated specimen?**

The act of adulterating or substituting urine specimens submitted for drug testing, is by definition, a refusal to test. The Coast Guard would initiate Suspension & Revocation proceedings against a licensed or documented mariner that adulterates or substitutes their specimen, seeking revocation of their license or document. Marine employers must report substituted or adulterated specimen incidents to the USCG if a licensed or documented mariner is involved.



**I am a self-employed fishing guide. Can I conduct my own random selection process?**

No. A person subject to testing cannot conduct the random selection and still meet the definition of "unannounced" as it pertains to random tests. This does not mean that you need to join a consortium, it does however mean that you need to find a disinterested third party to conduct the random selection process. This can be done through the services of a Third Party Administrator (TPA), such as a collection site manager, or by any other person that has no vested interest in the outcome of your test and can ensure that the random selection process is scientifically based.

**I am a member of a consortium that holds a Letter of Substantial Compliance. Isn't the DAPI required to skip to section 8 of the audit checklist?**

No. The checklist is a tool for the auditor to use. The LOSC allows the auditor to skip sections 1-7 but there is no requirement for the auditor to do so.

**I belong to a consortium and noticed that only 10% of my crewmembers were selected for random tests this year. Am I subject to a civil penalty for not testing 50% of my crewmembers?**

No. By being a member of a consortium, you are meeting your obligations for random testing. Your crewmembers are "pooled" together with crewmembers from many other marine employers. The consortium guarantees the Coast Guard that it will test that "pool" of crewmembers at 50% annually. You must however, upon demand, provide a copy of the MIS report submitted for your company, or, a letter from the consortium stating an MIS report was filed by the consortium on your company's behalf.

**Can the same crewmember be randomly tested more than once in a calendar year, and if so, will that count towards the 50%?**

Yes, if your selection process is in fact random. Each crewmember must have an equal chance of being selected each time a random selection for testing is conducted. Since the selection is random, it is reasonable to expect some people to be selected more than once, while others may not be selected at all during a given year. If you employ 100 crewmembers, you must select 50 crewmembers on a random basis for testing. You do not have to select 50 different people, you only have to ensure you randomly select 50.

**Does the Coast Guard require pre-employment and random alcohol tests?**

There is no requirement for pre-employment or random alcohol tests. Alcohol testing is only conducted following an SMI.

**Can I base the 50% random selection rate on the number of billets I'm trying to fill on my vessels?**

No. The rate of random testing applies to the total number of crewmembers employed by a marine employer. Since every crewmember (not just the ones working on any given day) must be subject to random testing each time a random selection is made, the 50% must be based on the total number of crewmembers.



**My company's positive test rate has been below 1% for the last 3 years. Can we reduce the rate at which we randomly test our crewmembers?**

No. 46 CFR 16.230(f) clearly states that the random testing rate can only be lowered by the Commandant of the Coast Guard, and that the rate may only be lowered when the industry-wide positive test rate falls below 1% for two consecutive years.

**What is the difference between a collection facility and a lab?**

A collection facility is the location where the marine employer sends his or her personnel to provide urine samples for drug testing. A lab is a place to which the collection facility ships the specimen for testing and analysis.

**Are the chemical testing regulations applicable only to inspected vessels?**

No. The USCG chemical testing regulations are applicable to commercial vessel crewmembers working on both inspected and uninspected vessels.

**What are the responsibilities of a master, who is not the owner of the vessel or marine employer regarding the chemical testing regulations?**

The master may be held accountable if the company policy designates the master with responsibilities regarding the marine employer's chemical testing program. The master could be charged with misconduct for violating company policy. Therefore, you as the master should confirm that your marine employer knows about the chemical testing regulations.

**Are volunteers considered crewmembers and therefore subjected to the chemical testing regulations?**

Yes, if the volunteer meets the definition of "crewmember." The payment status of an employee, whether he or she is a paid employee or serving as a volunteer, does not change the requirement for chemical testing.

**For which drugs are urine specimens being tested?**

Marijuana, Cocaine, Opiates, Amphetamines, and Phencyclidine (PCP), are the five drugs tested for in a 5-panel DOT test.

**Can urine samples be tested for alcohol following a Serious Marine Incident?**

No. The only acceptable SMI tests for alcohol are blood or breath.

**Does the Coast Guard accept hair testing for drugs?**

No. The only drug test accepted by the Coast Guard is a 5-panel DOT test, collected and analyzed in accordance with 49 CFR 40.

**What is the legal Blood Alcohol Concentration for crewmembers aboard commercial vessels?**

While there is no bottle to throttle regulation, a mariner is presumed to be intoxicated if his or her BAC is greater than or equal to 0.040%.

**Can I count post-accident/Serious Marine Incident drug tests towards my 50% random test rate?**

No. While accidents are a random occurrence, post accident tests are to be counted only as post accident/SMI tests and not as randoms.

**I operate a seasonal business. My crewmembers are college students that I hire at the start of the season and employ for about 5 months. Are those crewmembers required to be chemically tested?**

Yes. First, each crewmember will have to be pre-employment tested unless they meet criteria for an exemption under 46 CFR 210. Secondly, these crewmembers must be subject to random testing during the season. You as the marine employer are then responsible for ensuring that 50% of all the deckhands you hire are randomly tested. Additionally, you as the marine employer, must make sure those tests are spread reasonably throughout the operating season.

## **WHERE TO GET INFORMATION ABOUT...**

### **SUBSTANCE ABUSE**

National Clearinghouse for Alcohol and Drug Information  
PO Box 2345  
11426-28 Rockville Pike  
Rockville, MD 20847-2345

1-800-729-6686 or (301) 468-2600

You can obtain a free catalog, containing thousands of drug prevention products, by calling the toll-free number.

### **THE DRUG TESTING REGULATIONS**

There are several sources available to obtain the regulations.

Website: [www.access.gpo.gov/nara/cfr/cfr-retrieve.html](http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html)

Order charged to credit card: (202) 512-1800 or Order by fax: (202) 512-2250

Order by mail: **Superintendent of Documents**

**Government Printing Office**

**PO Box 371954**

**Pittsburgh, PA 15250-7954**

Purchases paid by check or money order made payable to **Government Printing Office**.

Ordering information:

☐ **46 CFR, Parts 4 and 16** (volume contains parts 1 through 40)

Order Document No. 869-034-00171-8 Cost: \$26.00 each

☐ **49 CFR, Part 40** (volume contains parts 1 through 99)

Order Document No. 869-034-00192-1 Cost: \$31.00 each

☐ **Drug and Alcohol Testing Management Information System (MIS)**

**Data Collection Form** (7 copy version)(Pkg of 50)

Order Document No. 050-000-00558-5 Cost: \$36.00 Pkg

### **COMMUNITY SERVICE HOTLINE NUMBERS**

Your local telephone directory

### **COLLECTION PROCEDURES**

Secretary of Transportation's Drug Office at (202) 366-3784

## **CERTIFIED LABORATORIES**

At the beginning of each month, the list of DHHS certified laboratories is published in the Federal Register.

Website: [www.health.org/labs/index.htm](http://www.health.org/labs/index.htm)

DHHS: (314) 443-6014

## **MIS FORM**

Copy provided in this guidebook.

Website: [www.uscg.mil/hq/g-m/nmc/genpub.htm#forms](http://www.uscg.mil/hq/g-m/nmc/genpub.htm#forms)

The form and its instructions may be obtained at any Marine Safety/Inspection Office. The forms can also be ordered from the Government Printing Office as indicated in the section titled THE DRUG TESTING REGULATIONS.

## **CONSORTIUMS**

The Coast Guard Issues a Letter Of Substantial Compliance (LOSC) to companies who have submitted their programs and have been determined to meet the basic requirements of the chemical testing regulations. Contact the nearest Coast Guard Marine Safety/Inspection Office or the USCG District Seven Drug and Alcohol Program Inspector (DAPI) to obtain an updated list of LOSC holders.

## **ASSISTANCE**

If a highly technical, legal, or unique problem arises, consult the regulations, the nearest Coast Guard Marine Safety/Inspection Office, the U.S. Coast Guard District Eight Drug and Alcohol Inspector (DAPI) at (314) 539-3091 ext. 273 {for Western Rivers} or (504) 589-3758 {for the Gulf Region}, or Commandant (G-MOA), U.S. Coast Guard at (202) 267-1430.

## **SAMPLE**

### **DRUG AND ALCOHOL POLICY**

#### **GENERAL:**

The purpose of this policy is to ensure public safety and to maintain a safe, and productive work environment for all employees by preventing accidents or other dangerous incidents that may result from drug or alcohol use. This policy pertains to all employees of the company who have cause to be on company vessel(s) and other properties.

#### **POLICY STATEMENT:**

The possession, use, or sale of alcohol on company premises during work hours is strictly prohibited. Further, the possession, use or sale of illegal drugs is prohibited at any time.

Employees are prohibited from reporting to work under the influence of alcohol or drugs.

An employee who is taking a prescription drug is required to present to the company a statement from the prescribing physician that the prescription drug will not impair the employee's work performance.

The company will require drug testing of applicants for employment in safety-sensitive positions. Any applicant who refuses to submit to the test will no longer be considered eligible for employment.

The company will require drug testing of employees who hold safety-sensitive positions. Any employee who refuses to submit to the test will no longer be considered eligible for employment.

Drug testing shall be conducted in accordance with DOT/USCG rules and regulations. Specifically, individuals will be tested for the presence of controlled substances (marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP) and alcohol) and will be subject to pre-employment, reasonable cause, periodic, random, and post accident drug testing. Such individuals must **TEST NEGATIVE** for the presence of controlled substances.

In the interest of the safety and health of its employees, the company reserves the right to inspect and search, at random, unannounced times, all packages, boxes, clothing, or any personal belongings carried on or off company property.

## **SAMPLE**

### **DRUG AND ALCOHOL POLICY**

#### **DISCIPLINE:**

Employees found to be in violation of this policy either directly possessing or using alcohol or drugs, as described above, or through a verified positive drug test or by court conviction, will be subject to immediate discharge from employment.

Any employee who fails to cooperate with the requirements set forth in this policy, including refusal to test, failure to provide a specimen within a reasonable time, failure to report for a scheduled appointment to provide a specimen, adulteration of a specimen, will be subject to disciplinary action which may include immediate termination of employment.

#### **ADMINISTRATIVE:**

The company strictly prohibits the use, possession, sale of illegal drugs, drug paraphernalia or unsanctioned use of alcohol aboard company vessel(s) or property. The company will cooperate fully with public authorities in the prosecution of anyone in violation of said prohibition.

Information concerning drug and/or alcohol test results, or violations of this policy will be treated as confidential information. Such information will be released only to management representatives who have a need to know. This information will also be provided to the Coast Guard or other federal and state agencies where required by law or regulation.

Test results or documentation showing the employee has been subject to random drug testing shall be provided to that employee or to their designated representative, upon written request by the employee.

### **ALCOHOL AND DRUG POLICY ACKNOWLEDGMENT**

I, \_\_\_\_\_, acknowledge that I have read the company alcohol/drug policy, and that I fully understand that violation of this policy will be grounds for immediate termination of my employment.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**SAMPLE REPORT TO COAST GUARD**

**(Fill in areas that are in ALL CAPS)**

**COMPANY LETTERHEAD**

**DATE**

**Commanding Officer  
Marine Safety Office XXXX  
ATTN: Senior Investigating Officer  
PO BOX XXXXX  
CITY, ST 12345-6789**

**Gentlemen:**

**Pursuant to provisions of 46 CFR, Parts 4, 5, and 16 COMPANY NAME hereby notifies you that MARINER'S NAME tested positive for DRUG TYPE during a REASON FOR TEST chemical test administered on DATE TEST and in accordance with the standard set forth in 49 CFR40. The laboratory used was LABORATORY NAME and the chemical test Identification number is ID NUMBER.**

**MARINER'S NAME holds a Coast Guard Merchant Marine LICENSE/DOCUMENT, number LICENSE/DOCUMENT NUMBER, as TYPE OF LICENSE/DOCUMENT, which was issued on ISSUE DATE. MARINER'S NAME last known address and phone number are:**

**ADDRESS**

**PHONE NUMBER.**

**Sincerely,**

**SIGNATURE**

**NAME OF DESIGNATED REPRESENTATIVE  
TITLE**

**Enclosure: (1) USCG Merchant Marine License/Document (COPY)**

**(2) Drug testing Custody and control Form**

**(3) Lab report and/or MRO report**

**Enclosure (3)**

**REPLACE WITH Enclosure (4) MIS Report**

<http://www.uscg.mil/hq/g-m/nmc/genpub.htm#forms>

Enclosure (4)



**REPLACE WITH Enclosure (5) 2692B**

<http://www.uscg.mil/hq/g-m/nmc/pubs/forms/drug.pdf>

Enclosure (5)

## CHEMICAL TEST REPORTING AGREEMENT

Marine employers should use this form, if they have an individual working for them who is not part of their Drug and Alcohol Testing Program. Remember, it is still the responsibility of the marine employer to ensure that all employees are enrolled in a valid program and that the information contained on this form is accurate and up to date. Each marine employer must keep a copy of this form in their records. If you have any questions, please contact your local Marine Safety Office or the District Eight Drug and Alcohol Program Inspector at 504-589-3758 (Gulf Coast) or (314) 539-3091 ext. 273 (Western Rivers).

\_\_\_\_\_ is employed by \_\_\_\_\_. He/she  
(Name of employee) (Name of company where mariner is enrolled  
in a chemical-testing program)

was hired on \_\_\_\_\_ and successfully passed a pre-employment chemical test  
(Date of employment)

on \_\_\_\_\_. Since the date of employment he/she has been enrolled in a  
(Date of pre-employ test)

chemical testing program that meets all requirements of 46 CFR 16.

\_\_\_\_\_  
(Name of company where  
mariner is enrolled in  
chemical testing program)

agrees to notify \_\_\_\_\_ if \_\_\_\_\_ fails a chemical test  
(Name of company that is going to hire mariner) (Name of mariner)

for dangerous drugs, refuses to submit to a chemical test for dangerous drugs, or  
discontinues employment.

\_\_\_\_\_  
(Signature of Company Representative) (Date)

\_\_\_\_\_  
(Signature of Mariner) (Date)

\_\_\_\_\_ agrees to notify \_\_\_\_\_ if  
(Name of company that is going to hire mariner) (Name of company that has mariner enrolled  
in the chemical testing program)

\_\_\_\_\_ fails a chemical test for dangerous drugs or refuses to submit to a  
(Name of mariner)  
chemical test for dangerous drugs.

\_\_\_\_\_  
(Signature of Company Representative) (Date)

\_\_\_\_\_  
(Signature of Mariner) (Date)

Enclosure (6)

**REPLACE WITH Enclosure (7) USCG Chemical Testing Program Inspection Checklist**